IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14123 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SEMROCK CHEMICALS PVT. LTD.

Versus

RAJENDRAKUMAR V. KAKADIA

Appearance:

1. Special Civil Application No. 14123 of 2003

MR DIPAK R DAVE for Petitioner No. 1

MR VAISHNAV FOR MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/06/2004

ORAL JUDGEMENT

Rule. Mr.Vaishnav for Mr.KV Gadhia appearing for the respondent waives service of notice of rule. At the request of the learned advocates for the parties,

the petition is taken up for final disposal forthwith.

2. In the present petition, the petitioner has challenged the legality of the award dated 24th February, 2003 passed by the Labour Court, Ahmedabad in Reference (LCA) No.2400/95. By the said award, the Labour Court was pleased to partially allow the reference raised by the respondent and the alleged action of the petitioner of terminating the services dated 16.6.95 was set aside. Consequently, the respondent was ordered to be reinstated in service with continuity of service and 75 per cent backwages.

3. The main ground raised before me on behalf of the petitioner is that the petitioner had, besides other objections, raised the objection with respect to the maintainability of the dispute before the Labour Court since the petitioner contended that the respondent is not a "workman" within the meaning of section 2(s) of the Industrial Disputes Act and that therefore the Labour Court ought to have rejected the reference. It is submitted on behalf of the petitioner through its learned advocate that the Labour Court has not given any finding with respect to this important aspect of the matter. It is the case of the petitioner that when a specific averment has been raised and an objection taken with respect to the maintainability of the dispute, the Labour Court ought to have decided the same before allowing the reference. It is further submitted that the question raised by the petitioner goes to the root of the matter and if the petitioner succeeds in establishing that the respondent is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, the Labour Court would not be in a position to entertain the dispute much less allow the same, which was done in the present case.

4. Both the learned advocates have advanced their arguments confining their focus on this limited issue and have drawn my attention to the award dated 24th February 2003 which is challenged in the present petition. Going through the entire award, I agree with the submissions of the learned advocate for the petitioner that though a specific objection was taken with regard to the maintainability of the dispute, since as per the petitioner opponent was not covered in the definition of "workman" under section 2(s) of the Industrial Disputes Act, the Labour Court has not given any finding in this regard and has allowed the reference without arriving at a definite finding as to whether the present respondent can be termed as workman within the meaning of section 2(s) of the Industrial Disputes Act or not. In this view

of the mater, the award of the Labour Court cannot be sustained and the same is required to be set aside with a further direction to remand the matter to the Labour Court for its fresh consideration and disposal on all issues raised by the parties in accordance with law.

5. Accordingly, the petition is allowed by quashing and setting aside the award dated 24.2.2003 passed by the Labour Court, Ahmedabad in Reference (LCA) No.2400/95 and the matter is remanded to the Labour Court for fresh consideration of the reference. It will be open to both the sides to lead fresh and further evidence if they choose to do so. Considering the fact that the dispute is an old one, the Labour Court is requested to accord priority consideration and dispose of the same as far as possible within a period of six months from today.

6. Subject to the above directions, the petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)